Supreme Court, U.S.
FILED

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No.

IN THE

SUPREME COURT OF THE UNITED STATES

Arthur Thomas Callahan,
Petitioner

v.

The State of Texas

On Petition For Writ Of Certiorari
To The Court of Appeals
Of Texas, Houston (1st District)

PETITION FOR WRIT OF CERTIORARI

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21pp

QUESTION PRESENTED

Whether Petitioner was denied effective assistance of counsel as is required under the Sixth Amendment to the Constitution when his trial attorney engaged in practically no plea bargain negotiations, failed to file any pretrial motions, and advised Petitioner to plead guilty to a first degree felony and presented less than an hour of testimony from defense witnesses before the trial court sentenced Petitioner to sixty years in prison.

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CITED AUTHORITIES

Case on Petition

Callahan v. State, 24 S.W.3d 483 (Tex.App. -- Houston [1st Dist.] 2000)

U.S. Cases

Hill v. Lockhart, 474 U.S. 52, 88 L.Ed.2d 203, 106 S.Ct. 366 (1985).

Strickland v. Washington, 466 U.S. 668, 80 L.Ed.2d 674, 104 S.Ct. 2052 (1984).

Citation of Reports

Callahan v. State, 24 S.W.3d 483 (Tex.App. -- Houston [1st Dist.] 2000).

Jurisdiction

The order sought to be reviewed is an opinion delivered by the Texas Court of Appeals on June 22, 2000. Rehearing was denied by that court on July 27, 2000. A Petition for Discretionary Review was denied by the Texas Court of Criminal Appeals on December 5, 2001.

This Court has jurisdiction to review this case because it concerns a matter of federal Constitutional law.

Constitutional Provision

U.S. CONST. amend. VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

STATEMENT OF THE CASE

On March 25, 1999, Petitioner pled guilty to two indictments of felony murder and signed a stipulation of evidence without a punishment recommendation by the prosecutor.[1] On June 10, 1999, after a presentence investigation report had been prepared, the trial court sentenced Petitioner to 60 years confinement in the Texas Department of Criminal Justice, Institutional Division on both cases.[2]

A Motion for New Trial was filed by Petitioner on July 12, 1999 in which the issue of ineffective assistance of counsel was raised.[3] On July 28, 1999 the trial court conducted a hearing on the Motion for New Trial, which was subsequently denied.[4]

A Notice of Appeal was filed on July 29, 1999. On appeal to the Court of Appeals of Texas, Petitioner raised the issues of ineffective assistance of counsel and an involuntary plea entered as a result of said ineffective assistance

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[1]C.R. (Clerk's Record) Vol. 1 pp. 20-28. Unless otherwise noted, references to the clerk's record are to Trial Court No. 785475 but contain documents found in the record of both causes.

[2]*Id.* at 32.

[3]*Id.* at 35.

[4]R.R. (Reporter's Record) Vol. 1 pp. 24-25.

of counsel.[5] Petitioner's conviction was affirmed by said court on June 22, 2000 and rehearing by that court was denied on July 27, 2000.[6] On December 5, 2001 a Petition for Discretionary Review was denied by the Texas Court of Criminal Appeals .[7]

Petitioner now files this petition urging the court to consider the issue of whether he was denied his Constitutional right to effective assistance of counsel.

ARGUMENT

In the cases involved in the petition at hand, the Court of Appeals of Texas has decided that it was not ineffective assistance of counsel which was harmful to Petitioner for Petitioner's trial counsel to fail to engage in plea bargain discussions. Further, counsel failed file any pretrial motions of a substantive nature and presented less than an hour of testimony at the sentencing hearing.

An accused is entitled effective assistance of counsel at the plea bargaining process.[8] In the

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[5]*Callahan v. State*, 24 S.W.3d 483 (Tex.App. - Houston [1st Dist.] 2000).

[6]*Id.*

[7]*See infra* Appendix.

[8]*Hill v. Lockhart*, 474 U.S. 52, 88 L.Ed.2d 203, 106 S.Ct. 366, (1985) and *Strickland v. Washington*, 466 U.S. 668,

current case, there was very limited if any pursuit of a plea bargain. According to the prosecutor, only a general discussion of the case was had, and no specific offers were made or sought.[9]

All of the parties involved in the trial proceedings agree that the case involved inflammatory subject matter which could subject the Petitioner to harsh consequences upon sentencing. Apparently, trial counsel for the Petitioner felt there was no defense to the facts of the case as alleged, as no pretrial motions were filed and Petitioner was willing to enter a plea without a recommendation even though he knew the chances of receiving probation were slim and that he could have easily been sentenced to more than 40 years.[10]

Given such a bleak set of circumstances, pursuing a plea bargain was the only reasonable alternative to Petitioner. Petitioner's counsel failed in the only task which could have possibly helped his client. Such effort can only be characterized as ineffective.

While the prosecution might have believed in the strength of its case to the point of not offering a plea bargain, such a position is not believable when such a little amount of work

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80 L.Ed.2d 674, 104 S.Ct. 2052 (1984).
[9]R.R. Vol. 1 pp. 5-14.
[10]C.R. Vol. 1 p. 43.

was done on behalf of Petitioner. The prosecutor was not forced to answer any discovery requests or pretrial motions. No challenges to the indictment were raised, and less than one hour of testimony was presented at the sentencing hearing according to the docket sheets.[11]

Further, it appears that there was never any potential for the case to actually be tried on its merits to determine guilt or innocence, a possibility which is often the most pressing reason for a prosecutor to offer a plea bargain, if for no other reason than to avoid the expense of time and resources to the government.

Moreover, the fact that Petitioner received a 60-year sentence is on its face proof of the harm suffered by Petitioner. Even if the prosecution had only offered a 50-year offer as it claimed was discussed, there is at a minimum a harm of 10 years. Had any actual advocacy taken place on behalf of Petitioner, the difference could have been much more. Petitioner was denied effective assistance of counsel and could likely have had a different result had he received effective assistance of counsel.

In the present case, Petitioner was presented very little assistance of counsel, certainly not the quality or quantity of which could be characterized as effective. As such, this Court should grant this Petition and set forth a

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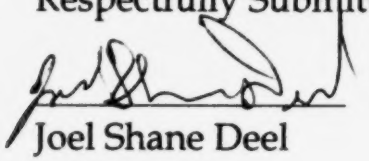
[11]C.R. Vol. 1 p. 52.

ruling on what Petitioner believes is an important question of federal Constitutional law which has been improperly answered by the lower state courts and which is in need of clarification and guidance from this Court.

Respectfully Submitted,



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